IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3762 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RADHAKRUSHNA RAMBHAI GADHAVI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3762 of 2004
MR ASHISH M DAGLI for Petitioner No. 1
MR SHAILESH C SHARMA for Petitioner No. 1
MR SIRAJ GORI AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 05/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr Siraj Gori, learned AGP for the respondents waives service of Rule.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. The petitioner is engaged in the business of contractor undertaking the work of construction and other activities. The petitioner purchased an Excavator being hydraulic excavator bearing No.UH 083 LC BACKHOE manufactured by TATA - HITACHI, on 10th February 2003 from one Charanjitsingh Ratansingh Gyani of Porbandar. The contract of sale in that behalf is produced at Annexure "B" to the petition. In the course of its business, the petitioner was required to transport the excavator from one site to another. When the excavator was being transported in truck bearing registration No. GJ-12 V-8768 both the excavator as well as the truck came to be detained by respondent No.4-Motor Vehicle Inspector at Samakhyali Check Post in Kutch district on 21.3.2004 on the ground that the excavator was a motor vehicle on which the petitioner was required to pay the motor vehicle tax of which the petitioner was in arrears. Hence, the petitioner has filed the present petition contending that the excavator in question is not a motor vehicle and in any view of the matter, even if the petitioner is required to pay any tax, it cannot be for any period prior to 10.2.2003.

3. In response to the notice, Mr Siraj Gori, learned AGP appears for the respondent-authorities and submits that the petitioner has an equally efficacious alternative remedy of filing an appeal before the Transport Commissioner under Section 14 of the Bombay Motor Vehicles Tax Act, 1958.

4. Mr Dagli for the petitioner, however, submits that since the petitioner's excavator as well as the truck in which it was being carried are detained since 21.3.2004 and since disposal of the appeal would naturally take some time, the petitioner would suffer irreparable loss and his business has already come to a grinding halt.

5. Having heard the learned counsel for the parties, we are of the view that the ends of justice would be met if the petitioner is relegated to the alternative remedy of preferring an appeal before the Transport Commissioner, but at the same time, the

respondent-authorities are required to be directed to release the excavator and the truck in question on the petitioner depositing the arrears of motor vehicles tax for the period from 10.2.2003 till 31.3.2004 and also current motor vehicles tax for the period upto 30.6.2004 and the petitioner also undertakes not to remove the excavator in question outside the State of Gujarat without prior permission of the Transport Commissioner.

6. Accordingly, this petition is partly allowed. Upon the petitioner depositing the amount of motor vehicle tax for the period from 10.2.2003 to 30.6.2004 and the petitioner filing an undertaking before the Transport Commissioner not to remove the excavator outside the State of Gujarat without his permission, and the petitioner filing an appeal before the Transport Commissioner within two weeks from today, the respondents shall release the Excavator bearing No. UH 083 LC BACKHOE and also the truck bearing registration No. GJ-12 V-8768 within two days from the date of compliance with the aforesaid conditions.

It is clarified that the deposit of the aforesaid amounts by the petitioner will be without prejudice to the rights and contentions of the parties including the petitioner's contention that the excavator in question is not a motor vehicle within the meaning of Bombay Motor Vehicles Tax Act, 1958.

It goes without saying that in case the petitioner succeeds in the appeal before the Transport Commissioner, the Transport Commissioner shall also pass appropriate orders for refund of the tax deposited under protest.

7. Rule is made absolute to the aforesaid extent only with no order as to costs.
Direct service is permitted.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)
zgs/-